

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONALD DAUGHERTY,

Case No. 16-CV-1595-PP

Plaintiff,

v.

ANDREW CHEVROLET,

Defendant.

**ORDER DENYING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE (DKT. NO. 2) AND ORDERING THE
PLAINTIFF TO PAY THE FILING FEE BY A DATE CERTAIN**

Plaintiff Donald Daugherty is a citizen of Wisconsin; he lives on Michigan Street in Milwaukee. Dkt. No. 1 at 1. He filed a *pro se* complaint against defendant Andrew Chevrolet (a Wisconsin corporation), alleging that the defendant had sold him a defective 2011 Chevy Impala in violation of Lemon Laws.¹ Dkt. No. 1 at 2. Consequently, the plaintiff seeks \$17,500 in damages. *Id.* at 4. The plaintiff also filed a motion for leave to proceed without prepayment of the filing fee. Dkt. No. 2.

In order to allow a plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff has the ability to pay the filing fee, and if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

¹ The plaintiff does not specify whether he wants to pursue the Wisconsin Lemon Law remedies under Wis. Stat. §218.0171 or federal remedies under the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*

In support of his request that the court waive the filing fee, the plaintiff stated that he was unemployed and was currently in a Chapter 13 bankruptcy. Dkt. No. 2 at 2, 4. The court has confirmed that before he filed this complaint (on December 1, 2016), the plaintiff filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Wisconsin. In re Daugherty, 16-bk-24521 (Bankr., E.D. Wis.). Upon reviewing the documents the plaintiff filed in the bankruptcy case, however, the court found that, contrary to his representation to this court, the plaintiff was employed at the time he filed this case, and that by means of a wage deduction order, he was paying the bankruptcy court \$80.00 a week. In re Daugherty, dkt. no. 29. (On April 20, 2017, the bankruptcy court dismissed the plaintiff's chapter 13 case for failure to make plan payments. In re Daugherty, dkt. no. 32.)

It appears that the plaintiff was not truthful with this court when he said he was unemployed. The court **DENIES** the plaintiff's motion for leave to proceed without prepayment of the filing fee. Dkt. No. 2. The court **ORDERS** that the plaintiff shall pay the \$350 filing fee and \$50 administrative fee within forty-five days (45) of the date of this order—that is, by **Monday, August 7, 2017**—or the court will dismiss his case without further notice or hearing.

Dated in Milwaukee, Wisconsin this 23rd day of June, 2017.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge